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24 **UNITED STATES DISTRICT COURT**
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 CECILIA LINARES, an Individual and
27 ABEL GONZALEZ, an Individual, On
28 Behalf of Themselves and All Other Similarly
Situated California Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: 3:11-cv-02547-MMA-RBB

CLASS ACTION

SECOND AMENDED CLASS ACTION
COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiffs Cecilia Linares and Abel Gonzalez, by and through their attorneys, brings
 2 this action on behalf of themselves and all others similarly situated against Defendant
 3 Costco Wholesale Inc., and allege as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland SignatureTM
 6 Glucosamine line of joint health dietary supplements.² Through an extensive,
 7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
 8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
 9 cartilage and improve joint function for all joints in the human body, for adults of all ages
 10 and for all manner and stages of joint related ailments. For example, on each and every
 11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
 12 states that Kirkland Glucosamine is “Clinically Proven Effective” for “optimum
 13 mobility” and “as a building block for healthy cartilage” and that “two tablets per day
 14 deliver” these benefits, as well as “nourishes JOINT and CONNECTIVE TISSUE” and
 15 “supports JOINT CUSHIONING” (hereafter referred to as the “joint renewal, mobility
 16 and rejuvenation” representations). On each and every Kirkland Glucosamine and MSM
 17 product label and/or package, Defendant makes similar joint renewal, mobility and
 18 rejuvenation claims and also promises that “noticeable improvement in flexibility and
 19 range of motion should be expected after taking this supplement as directed on a
 20 consistent basis.” However, the Kirkland Glucosamine products do not benefit or
 21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
 22 found no causative link between the ingredients in the Kirkland Glucosamine products

23 ¹ Kirkland SignatureTM is Costco’s store brand, also known as its “own-brand”, “house
 24 brand”, or “private label”. It is available exclusively at Costco’s website and Costco
 25 warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most
 successful brands in the country.

26 ²The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include:
 27 (1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate (“Kirkland
 Glucosamine Chondroitin”); and (2) Kirkland SignatureTM Extra Strength Glucosamine HCL
 and MSM (“Kirkland Glucosamine and MSM”) (collectively, “Kirkland Glucosamine” or the “Products”).

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
 2 and reliable scientific evidence to support its representations. Defendant's representations
 3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
 5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
 6 representations through a variety of media, including in its print advertisements, as well
 7 as on its Product packages and labeling, website and online promotional materials. The
 8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
 9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
 11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
 12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
 13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiffs bring this action on behalf of themselves and other similarly
 15 situated California consumers who have purchased the Products to halt the dissemination
 16 of this false and misleading advertising message, correct the false and misleading
 17 perception it has created in the minds of consumers, and obtain redress for those who
 18 have purchased the Kirkland Glucosamine products. Plaintiffs allege violations of the
 19 Consumers Legal Remedies Act, the Unfair Competition Law, and Breach of Express
 20 Warranty created by Defendant's advertising, including false labeling.

JURISDICTION AND VENUE

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
 23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
 24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
 25 the members of the Class are citizens of a state different from Defendant.

27 3 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
 28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last visited Oct. 3, 2011).

6. This Court has personal jurisdiction over Defendant because Defendant is authorized to do and does conduct business in California. Defendant has marketed, promoted, distributed, and sold the Kirkland Glucosamine products in California, and Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred while they resided in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

PARTIES

8. Plaintiff Cecilia Linares resides in Imperial, California. Towards the end of 2010, Plaintiff Linares was exposed to and saw Defendant's representations by reading the front, back and sides of the Kirkland Glucosamine Chondroitin label at a Costco store in El Centro, California. After reading the label, Plaintiff Linares purchased the Kirkland Glucosamine Chondroitin product to relieve her joint pain and in so doing relied on every single one of Defendant's renewal, mobility and rejuvenation representations. The Kirkland Glucosamine Chondroitin that Plaintiff purchased and took as directed did not help improve joint mobility, rebuild cartilage or improve joint function as represented. As a result, Plaintiff Linares suffered injury in fact and lost money. She would not have purchased Kirkland Glucosamine Chondroitin had she known it did not provide the advertised joint health benefits.

9. Plaintiff Abel Gonzalez resides in Canyon Lake, California. On or around January 2012, Plaintiff Gonzalez was exposed to and saw Defendant's representations by reading the front, back and sides of the Kirkland Glucosamine and MSM label at a Costco store in southern California. After reading the label, Plaintiff Gonzalez purchased the Kirkland Glucosamine and MSM product to improve the joint function and reduce

1 the joint pain in his shoulders and in so doing relied on every single one of Defendant's
2 renewal, mobility and rejuvenation representations. The Kirkland Glucosamine and
3 MSM that Plaintiff Gonzalez purchased and took as directed did not help improve joint
4 mobility, rebuild cartilage or improve joint function as represented. As a result, Plaintiff
5 Gonzalez suffered injury in fact and lost money. He would not have purchased Kirkland
6 Glucosamine and MSM had he known it did not provide the advertised joint health
7 benefits.

8 10. Defendant Costco Wholesale Inc., is a public corporation incorporated
9 under the laws of the state of Washington. Defendant's corporate headquarters is located
10 at 999 Lake Drive, Issaquah, WA 98027. Defendant distributes, markets, and sells the
11 Kirkland Glucosamine products to tens of thousands of consumers in California.

FACTUAL ALLEGATIONS

The Kirkland Glucosamine Products

14 11. Since 2001, Costco has distributed, marketed, and sold the Kirkland
15 SignatureTM line of joint dietary supplements. These products include: (1) Kirkland
16 SignatureTM Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland
17 SignatureTM Extra Strength Glucosamine HCL and MSM.

18 12. The Kirkland Glucosamine products are sold online and in Costco stores
19 statewide. The Kirkland Glucosamine and MSM product is available in 375 count
20 bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product
21 is available in 220 count bottles, retailing for approximately \$25. The following are
22 screen shots of the Kirkland Glucosamine products:



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9 13. Since the Products' launch, Costco has consistently conveyed the message
10 to consumers throughout California that the Kirkland Glucosamine products, with their
11 "extra strength" formulas are clinically proven to deliver "optimum mobility" and will
12 protect and build cartilage. Defendant's renewal, mobility and rejuvenation
13 representations are false, misleading and deceptive.

14 14. Defendant represents that the claimed health benefits are achieved through
15 the combination of ingredients in the Products. The primary active ingredient in both
16 Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino
17 sugar that the body produces and distributes in cartilage and other connective tissue. The
18 Products' labeling and packaging states the benefits associated with taking glucosamine
19 hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and
20 other connective tissues, which are needed for healthy structure and function of joints." There
21 is no competent and reliable scientific evidence that taking glucosamine—let alone
22 through oral administration—results in the body metabolizing it into something that
23 builds cartilage or improves joint structure or function. In fact, clinical cause and effect
24 studies have found no causative link between glucosamine hydrochloride
25 supplementation and joint renewal, mobility or rejuvenation.

26 15. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex
27 carbohydrate found in the body's connective tissues. On the Product's labeling and
28 packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and

1 serves as a building block for healthy new cartilage.” There is no competent and reliable
2 scientific evidence that taking chondroitin—let alone through oral
3 administration—results in the body metabolizing it into something that assists in building
4 joint cartilage. Clinical cause and effect studies have found no causative link between
5 chondroitin supplementation and joint renewal, mobility or rejuvenation.

6 16. The Methylsulfonylmethane (“MSM”) found in Kirkland Glucosamine and
7 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
8 and milk. On the Product’s labeling and packaging, Defendant claims that MSM “is a
9 necessary component that works in conjunction with Glucosamine to provide the building
10 blocks of collagen, an important component of healthy joints and connective tissue.
11 Clinical research shows MSM increases glucosamine’s effectiveness.” There is no
12 competent and reliable scientific evidence that taking MSM—let alone through oral
13 administration—results in the body metabolizing it into something that builds cartilage or
14 improves joint structure or function, or makes glucosamine work more effectively.
15 Clinical cause and effect studies have found no causative link between MSM
16 supplementation and joint renewal, mobility or rejuvenation.

17 17. The Kirkland Glucosamine Chondroitin bottle references one study
18 purportedly supporting Defendant’s “Clinically Proven Effective” representation. Other
19 than referencing the study sponsor, no other identifying information is included. The
20 referenced NIH study is not competent and reliable scientific support for Defendant’s
21 representations. The NIH sponsored study did not examine, let alone find, that
22 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
23 support joint cushioning. Defendant’s citation to this study as support for its joint
24 renewal, mobility and rejuvenation representations constitutes further deceptive and
25 misleading conduct, in as much as the study is not competent and reliable evidence of
26 efficacy.

27 18. In fact, numerous clinical cause and effect studies have found no causative
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link between any of the primary active ingredients in the Kirkland Glucosamine products alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless, Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for adults of *all* ages and for *all* manner and stages of joint related ailments — prominently claims on the Products' packaging and labeling that Kirkland Glucosamine, with its “extra strength” formula, will “deliver” “optimum joint mobility”, rebuild cartilage and improve joint function. Front, back and side shots of the two Kirkland Glucosamine product labels appear as follows:





12 19. Defendant did not and does not have competent and reliable scientific
 13 evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or
 14 in combination benefit, improve or promote joint renewal, mobility or rejuvenation.
 15 Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in
 16 the Kirkland Glucosamine products and the prevention or improvement of joint
 17 degeneration or other joint ailments. Defendant's renewal and rejuvenation
 18 representations are false and misleading and reasonably likely to deceive the average
 19 consumer.

20 ***The impact of Defendant's wrongful conduct***

21 20. Despite the lack of competent and reliable scientific evidence and
 22 numerous clinical studies that have found no causative link between the ingredients in the
 23 Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant
 24 continues to unequivocally claim that its Kirkland Glucosamine products are an effective
 25 treatment for improving joint renewal, mobility and rejuvenation in all adults.

26 21. As the distributor of the Kirkland Glucosamine products, Defendant
 27 possesses specialized knowledge regarding the content and effects of the ingredients
 28 contained in its Kirkland Glucosamine products and is in a superior position to learn of

1 the effects—and has learned of the effects—its Products have on consumers.

2 22. Specifically, Defendant affirmatively misrepresented that the Kirkland
3 Glucosamine products, with their “extra strength formula”, are clinically proven to
4 provide “Optimum JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”,
5 “Nourish[] JOINT and CONNECTIVE tissue” and “Support[] JOINT CUSHIONING”.
6 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
7 conducted, clinical cause-and-effect studies have found no causative relationship between
8 the product ingredients and the prevention or improvement of joint degeneration or other
9 related ailments and Defendant has no competent and reliable scientific evidence that its
10 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
11 or rejuvenation as represented.

12 23. Notwithstanding these deceptive representations and material omissions,
13 Defendant conveyed and continues to convey one uniform message: Kirkland
14 Glucosamine, with its “extra strength formula”, is clinically proven to provide “Optimum
15 JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and
16 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
17 human body, for adults of all ages and for all manner and stages of joint related ailments..

18 24. Plaintiffs and Class members have been and will continue to be deceived or
19 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
20 representations. Plaintiffs purchased and consumed the Products during the Class period
21 and in doing so, read and considered the Products’ label and based their decision to buy
22 the Products on the joint renewal, mobility and rejuvenation representations.
23 Defendant’s deceptive representations and omissions were a material factor in
24 influencing Plaintiffs’ decision to purchase and consume the Products. Plaintiffs would
25 not have purchased the Products had they known that Defendant’s representations were
26 false and misleading, that Defendant did not possess competent and reliable scientific
27 evidence to support its joint renewal, mobility and rejuvenation representations, and that
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1 clinical cause-and-effect studies have found no causative link between the ingredients in
2 Kirkland Glucosamine and joint renewal, mobility or rejuvenation.

3 25. As a result, Plaintiffs and the Class members have been damaged in their
4 purchases of these Products and have been deceived into purchasing Products that they
5 believed, based on Defendant's representations, were proven to be effective in improving
6 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
7 not.

8 26. Defendant, by contrast, reaped enormous profits from its false marketing
9 and sale of these Products.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 27. Plaintiffs bring this action on behalf of themselves and all other similarly
12 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
13 Rules of Civil Procedure and seek certification of the following Class:

14 All California residents who, within the applicable statute of
15 limitations, purchased Kirkland SignatureTM Extra Strength
16 Glucosamine Chondroitin Sulfate and/or Kirkland SignatureTM
17 Extra Strength Glucosamine with MSM.

18 Excluded from the Class are Defendant, its parents,
19 subsidiaries, affiliates, officers and directors, and those who
20 purchased the Kirkland Glucosamine products for the purpose
21 of resale.

22 28. Members of the Class are so numerous and geographically dispersed that
23 joinder of all Class members is impracticable. Plaintiffs are informed and believe, and
24 on that basis allege, that the proposed Class contains many thousands of members. The
25 precise number of Class members is unknown to Plaintiffs.

26 29. Common questions of law and fact exist as to all members of the Class and
27 predominate over questions affecting only individual Class members. The common legal
28 and factual questions include, but are not limited to, the following:

- Whether the claims discussed herein that Defendant made about the

1 Products were or are misleading, or reasonably likely to deceive;

2 • Whether Defendant's alleged conduct violates public policy;

3 • Whether the alleged conduct constitutes violations of the laws
4 asserted herein;

5 • Whether Defendant engaged in false and misleading advertising;

6 • Whether Plaintiff and Class members have sustained monetary loss
7 and the proper measure of that loss;

8 • Whether Plaintiff and Class members are entitled to restitution,
9 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and

10 • Whether Plaintiff and Class members are entitled to an award of
11 compensatory and/or punitive damages.

12 30. Plaintiff's claims are typical of the claims of the members of the Class
13 because, *inter alia*, all Class members were injured through the uniform misconduct
14 described above, were subject to Defendant's deceptive joint renewal, mobility and
15 rejuvenation representations accompanying each and every bottle of the Kirkland
16 Glucosamine products which include the same primary active ingredient – glucosamine
17 hydrochloride. Plaintiff is advancing the same claims and legal theories on behalf of
18 herself and all members of the Class.

19 31. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the Class. Plaintiff has retained counsel competent and experienced in both
21 consumer protection and class litigation.

22 32. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy. The expense and burden of individual
24 litigation would make it impracticable or impossible for proposed Class members to
25 prosecute their claims individually. It would thus be virtually impossible for the Class,
26 on an individual basis, to obtain effective redress for the wrongs done to them.
27 Furthermore, even if Class members could afford such individualized litigation, the court
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system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

33. In the alternative, the Class also may be certified because Defendant has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

34. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendant from engaging in the acts described, and requiring Defendant to provide full restitution to Plaintiff and Class members.

35. Unless a Class is certified, Defendant will retain monies received as a result of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

COUNT I
Violation of Business & Professions Code §17200, *et seq.*

36. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

37. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

38. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's conduct because she purchased Kirkland Glucosamine

1 in reliance on Defendant's joint renewal, mobility and rejuvenation representations
2 detailed above, but did not receive a product that provides joint renewal, mobility or
3 rejuvenation.

4 39. The Unfair Competition Law, Business & Professions Code §17200, *et seq.*
5 ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and
6 any false or misleading advertising. In the course of conducting business, Defendant
7 committed unlawful business practices by, *inter alia*, making the representations (which
8 also constitutes advertising within the meaning of §17200) and omissions of material
9 facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711,
10 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common
11 law.

12 40. Plaintiff and the Class reserve the right to allege other violations of law,
13 which constitute other unlawful business acts or practices. Such conduct is ongoing and
14 continues to this date.

15 41. Defendant's actions also constitute "unfair" business acts or practices
16 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
17 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
18 packaging, and thereby offended an established public policy, and engaged in immoral,
19 unethical, oppressive, and unscrupulous activities that are substantially injurious to
20 consumers.

21 42. As stated in this Complaint, Plaintiff alleges violations of consumer
22 protection, unfair competition and truth in advertising laws, resulting in harm to
23 consumers. Defendant's acts and omissions also violate and offend the public policy
24 against engaging in false and misleading advertising, unfair competition and deceptive
25 conduct towards consumers. This conduct constitutes violations of the unfair prong of
26 Business & Professions Code §17200, *et seq.*

27 43. There were reasonably available alternatives to further Defendant's
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legitimate business interests, other than the conduct described herein.

44. Business & Professions Code §17200, *et seq.*, also prohibits any “fraudulent business act or practice.”

45. Defendant's actions, claims, nondisclosures and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §17200, *et seq.*

46. Plaintiff and other members of the Class have in fact been deceived as a result of their reliance on Defendant's material representations and omissions, which are described above. This reliance has caused harm to Plaintiff and other members of the Class who each purchased Defendant's Kirkland Glucosamine products. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

47. As a result of its deception, Defendant has been able to reap unjust revenue and profit.

48. Unless restrained and enjoined, Defendant will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

49. Plaintiff, on behalf of herself and all others similarly situated, and the general public, seeks restitution and disgorgement of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competition, an injunction prohibiting Defendant from continuing such practices, corrective advertising and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

COUNT II

Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

50. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

51. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class

52. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code §1750, et seq. (the “Act”). Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendant’s Kirkland Glucosamine products are goods within the meaning of the Act.

53. Defendant violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Defendant's Kirkland Glucosamine products:

(5) Representing that [the Kirkland Glucosamine products have] . . . characteristics, . . . uses [or] benefits . . . which [they] do not have.

* * *

(7) Representing that [the Kirkland Glucosamine products are] of a particular standard, quality or grade, . . . if [they are] of another.

* * *

(9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

(16) Representing that [the Kirkland Glucosamine products have] been supplied in accordance with a previous representation when [they have] not.

54. Defendant violated the Act by representing and failing to disclose material facts on the Kirkland Glucosamine product labels and packaging, as described above, when it knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Kirkland Glucosamine products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

55. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

56. Pursuant to §1782 of the Act, by letter dated November 2, 2011, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act.

57. Defendant failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks claims for actual, punitive and statutory damages, as appropriate.

58. Defendant's conduct is malicious, fraudulent and wanton.

COUNT III
Breach of Express Warranty

59. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

60. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

61. Defendant expressly warranted on each and every box of Kirkland Glucosamine that the Products help to provide “Optimum JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and CONNECTIVE tissue” and “Support[] JOINT CUSHIONING”. These joint renewal, mobility and rejuvenation statements made by Defendant are affirmations of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promises. Plaintiff read and placed importance on Defendant’s joint renewal, mobility and rejuvenation representations.

62. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

63. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing Products that could provide the

benefits described above which was the only reason Plaintiff and Class members purchased the Kirkland Glucosamine products.

64. As a result of Defendant's breach of its warranty, Plaintiff and Class members have been damaged in the amount of the purchase price of the Kirkland Glucosamine products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;
- E. Ordering Defendant to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs; and
- G. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: April 25, 2012

BONNETT FAIRBOURN FRIEDMAN
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18 Telephone: 215-592-1500

19 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record denoted on the Court's Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct. Executed on April 25, 2012.

By: s/ Todd D. Carpenter

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